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Online
ISSN 1440-9828

July 2012 No 630

FROM THE ARCHIVES

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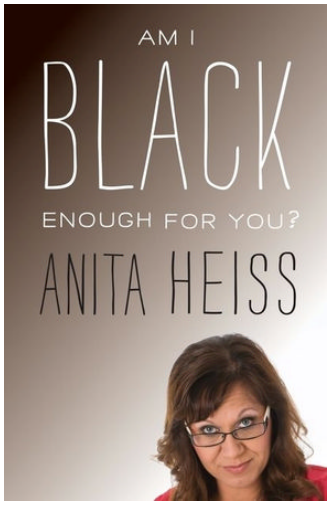
Law
Passion and Illusions: Anita Heiss's Stories
Michael Connor

Anita Heiss, *Am I Black Enough for You?* (Bantam/Random House, 2012), 304 pages, $34.95

Anita Heiss is one of the nine part-Aborigines who took Andrew Bolt to court, and won. In *Am I Black Enough for You?* she writes of herself, family history, and the Bolt trial. "My identity," says Heiss, who was born in suburban Sydney in 1968, went to Catholic schools and then to university, "is not simply about race, it's about my family history, it's about the history of Aboriginal Australia generally, it's about the way I have been shaped as a human being since birth." Her visit to Japan, in a chapter called "Blackfella Abroad", takes readers into the world of the White Aborigines.



Qantas upgraded her to Business Class. From Tokyo she travelled on to Nagoya and lectured university students on the "Stolen Generations"—they had to read her middle-school children's novel *Who Am I?* It's supposedly a 1937 child's diary and has entries like this: "I met Dot today at the shop. She gave me some lollies which was really naughty cos we aren't supposed to eat before dinner, but geez they was nice." Surrounded by Japanese, Heiss wasn't happy, she felt unobserved and unappreciated by her hosts: "I wanted them to know that I was from Australia, that I was Aboriginal and not a westerner ... I wanted to scream, 'I'm the other! I'm the one the westerners write about!'" She went into a department store café and despised an Englishman who came in: "He spoke in a plum English accent and whined about his piece of cake." She ignores him, fears the Japanese will think they are alike, and breaks into heartfelt italics:

> *I don't want to be alone in this place, but I don't want people to think I'm like you. You're the coloniser, and you complain too much. That's not me! I'm happy with any cake, especially the one I've got right now.* I got up quickly and headed to a familiar shop door across the street. Inside I felt happy, warm, at peace, at ease, at home, which some may think weird for a proud Wiradjuri woman, but I had just walked into Tiffany's.

Am I Black Enough for You? is a catchy title, and a cowardly provocation of Andrew Bolt. Both she and her publishers, Random House, know he is legally prevented from responding to her question. It's also the wrong question to ask Bolt. That was not the argument of his maligned articles. In the *Australian*, Caroline Overington wrote that Heiss missed the point: "The issue is whether those benefits designed to assist Aboriginal people out of their desperate poverty should be more sharply targeted at those with a genuine need." She is right. It's also the issue the White Aborigines are afraid to discuss.

Heiss is angered that we (presumably other Australians) should assume that someone like her is not an Aborigine because she isn't black-skinned. Several times she refers to Andrew Bolt's use in his trial statement of a photo of her mother, taken from her blog, to support his observation that she has a mixed heritage. An "error" according to Heiss, who forgets that her readers may Google for themselves. She instructs us on the correct way to behave by quoting from a book written with La Perouse school children (published by Oxford University Press). In it a boy says

he hasn't noticed many Kooris in Bondi and is chastised for saying so by a juvenile PC enforcer:

> "You don't see many Kooris, but what're you looking for? Kooris aren't that dark you know," Judy says. Mary puts her arm over Judy's shoulder. In the past, Judy's been given a hard time about being a fair-skinned Koori.

Heiss does what she teaches the kids not to do. She judges race and makes cultural assumptions solely on appearances. Of a visit to Hobart she writes: "It seemed uncomfortably homogenous in its population, and I was an unwanted visitor. I was also, compared to the locals, quite dark in complexion." The White Aborigines of Tasmania may feel slighted. She makes the same cultural/racial judgments when lecturing in Tahiti: "The majority of the audience were local French residents interested in literature and a handful of Tahitians." The same double standards were present in the trial statement of Pat Eatock, who brought the case against Bolt, when she spoke of using skin colour and physical appearance to recognise Aboriginality:

> I have photos of Lucy [her grandmother]; she is clearly Aboriginal but not particularly dark. My grandmother's husband, my grandfather, was an Aboriginal man, Bill Eatock. They married in 1894. He looked very Aboriginal. I have seen a photograph of Bill; he had a very black face and a long white beard.

Heiss uses language which can only be used by insiders about themselves. She calls herself "Black", "Blackfella", and part of the "mob"—all "others" in our multifaceted nation are called "white". Passing the faces on our streets it's hard not to see that Heiss, and those like her, have been left behind by history. Dr and Dr Kelueljang from Macquarie Fields, meet Dr Other from Matraville.

The family story she tells, so necessary for asserting her insider membership, is fractured and dismembered to fit the narrative of Aboriginal identity. Belonging to an aggrieved Aboriginal community supposedly gives her the authority to express resentment towards contemporary Australia for our past and present racism. Calming racial tensions is not one of her aims. This bonsai family tree—it completely excludes her father's family—has too little structure to support anything so grand. As history writing it is uninformed and completely present-orientated. The facts it relies on are sometimes uncertain. For instance, the story that her grandmother and her sister were stolen and sent to a home for Aboriginal girls (which Heiss claims is based on documentary evidence) supposedly took place years before the institution opened.

Her father, Josef Heiss, was born in a small village near Salzburg in 1936. It escapes his daughter's notice that the real Other returned home to Austria in 1938. By the time he began attending primary school her father's village was part of Nazi Germany, a world war was being fought, and the Holocaust was burning—often with the assistance of Austrian executioners and jailers. This produces no comment whatsoever from Josef's daughter. Heiss refers to times when she has explained racism and cultural identity to him, but she never seems to have asked him if he remembers saluting a photo of the Fuehrer during his schooldays, or if his hometown of St Michael im Lungau was ever declared *Judenfrei*. To leave unexplored the story of her Austrian forebears during the first half of the twentieth century is cultural blindness. Is she afraid of finding brown relations? Comparing what happened to her Austrian family in the 1930s and 1940s with what happened to her Australian family would have made a more interesting book—and perhaps given her a more realistic idea of state racism.

At the time of writing this essay (early May) I have published on *Quadrant Online* some concerns I have with **the facts** put forward by Heiss. They may have been resolved by the time this is published. Trial claims that family members were "stolen" were not tested in the court, and they were accepted by the judge. Now that Heiss has provided some of the details behind those claims there may be a lot more to question in her account.

Elsie Heiss, Anita's mother, has told her daughter that her own father, James Williams, was a "Wiradjuri warrior". The connection with tribal life was probably long gone by the time he was born in Brungle in 1900, to Catholic parents. Amongst the evidence used by Keith Windschuttle in *The Stolen Generations* is a 1904 report from the manager of Brungle Aboriginal Station:

> During the year the old King (John Nelson) died. It is sad that very little notice was taken of his decease, and that the old customs of the race are fast disappearing, the habits and the customs of the white people taking their place.

On Aboriginal traditions and culture Heiss is trivial and condescending. Of her maternal grandfather she says: "Although Catholic, he was initiated through traditional sacred Aboriginal men's business, and spirituality was part of his life." Initiation was the difference between being a boy and a man, between belonging and being excluded. Whether it still existed in Brungle in the years before the First World War Heiss probably has no idea and she gives no indication that she has tried to find out. It is a matter of supreme seriousness in traditional life but is trivialised here by the Hindmarsh Island platitude: it is the defining, irrevocable marker of Aboriginality:

> In the western desert of Australia a boy becomes a man by having an upper central incisor pounded out of his head with a rock, without anaesthetic, without permission to express pain or terror; by having his foreskin cut off in little pieces with a stone knife and seeing it eaten by certain of his male relatives, and as a climax of agony, by having his penis slit through to the urethra from the scrotum to the meatus, like a hot dog. At the same time the men singe into his brain with the white-hot poker of these

> memorable operations the first important knowledge, secular and sacred, of what he must know to survive in the world's most hostile inhabited land. He goes away by himself, bleeding, terrified, to prove he can live for a time alone. When he returns to camp weeks or months later, he is a man, a child no longer. The little boys throw toy spears at him. They break against his chest.

That was the anthropologist John Greenway in his brilliant book *Down Among the Wild Men* (1972). He was American, he knew Australia, and he knew what he was writing about. Anita Heiss, it seems, grew up already knowing everything: "My greatest educational challenge as a secondary student in relation to Aboriginality was that I knew more about Aboriginal Australia than my teachers." The mention of her grandfather's supposed initiation seems to be the only time the custom is mentioned in her book, but it has appeared elsewhere in her writing. Peta, the indigenous arts bureaucrat and White Aboriginal narrator of her novel *Avoiding Mr Right*, uses the word in relation to a cocktail bar, "Friday came and I was looking forward to my initiation into the Comme bar after-work soiree ... I looked hot and I knew it." Peta, like her creator, is a stickler for PC language and rebukes a co-worker who has said she has a "personal mission": "Hasn't anyone around here told you that it brings back terrible memories of mission managers and mission life for a lot of Aboriginal Australians?"

For over fifty years a few cutting words have been treasured in someone's memory, probably Heiss's mother's. When they come into the open Heiss uses them to make a very modern political argument of resentment: the anecdote also illustrates her knowledge of Aboriginal history, and her mother's family. After the Second World War the Williams family moved to Griffith where the adults worked as seasonal fruit pickers:

> The kids went to Hanwood Primary, where they were told quite blatantly, "You play up and you're out on your heads. You are only here thanks to the courtesy of the parents and *citizens*." It was the reference to "citizens" that stung the most, making a point of the non-status the Blacks had, not only in town, but around the country.

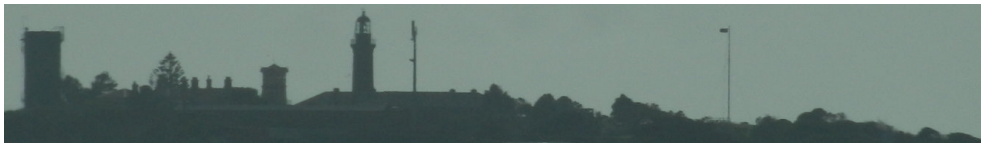
Am I Black Enough for You? was worked on by professional Random House editors, and probably seen by the family and friends she thanks. Not one pointed out that Heiss should have written "parents and *citizens*" with capital letters because it was not an expression of two ideas but a clear reference to the school's Parents and Citizens' Association. Through this book there is an unexplored theme that runs just under the surface. It's benevolence, or charity. It is the unacknowledged and unthanked help that has been given to the Williams and Heiss families by people wishing to assist them because they are Aboriginal. That unkind remark, or even deserved warning, could and would have been given to any children. Heiss does not consider that the local P & C may have been financially helping her family to attend the school, and clearly those who were there have not pointed out her error.

Heiss uses the incident to show that Australian Aborigines, and her family, were denied voting rights. This is a basic part of her understanding of Aboriginal history, yet even Wikipedia would tell her that the matter was more complex. Perhaps she's not interested, for if she has researched her family history how could she not know that at the time the event took place the adults in her family had voting rights? In fact, her grandparents and great-grandmother were on the electoral rolls since, at least, 1930—as were other residents of Brungle Aboriginal Station.

There is little new on the background to the Bolt trial, even though Heiss writes, "The case was traumatic, but it will remain the most important thing I will ever do in my lifetime." Strange then that the chapter called "The Trial: In the Court" is so short, just over four pages, and is less detailed than her account of Oprah Winfrey's visit to Sydney. Though she had a $90,000 Fellowship from the Aboriginal and Torres Strait Islander Arts Board and a Random House contract for this book, Heiss attended just a single day of the trial, the first, and came late. Offering a quote from her barrister Ron Merkel, she says his words gave her goosebumps. They include one of the Nazi comments he directed towards Bolt. Heiss says, "I knew at that moment that we would win." Summing up her one day in court she correctly noted, "Ron had set the tone for the trial." Reflecting on those headline-making slurs that appeared in the next day's newspapers, has she never wondered if a Heiss and a Merkel ever confronted each other somewhere in Holocaust Europe?

Heiss returned to Sydney and months later sat in a Redfern bistro for five hours fielding the messages of congratulations when the result was known. Although she has lit the bushfire which is consuming our freedom of speech, you wonder whether she really knows what she has done: "By the time judgment day arrived, this case was no longer simply about Blacks, it was about all those oppressed by opinion columnists."

Anita Heiss and her publisher, Random House, have still not explained the confusing claims in Heiss's book which are examined in the following:



Michael Connor:

Anita Heiss: "Where I began..."

April 20, 2012

Given her role in the Bolt Trial it was expected that Anita Heiss's *Am I Black Enough For You?* would be an important book.

It may be more important than even its Random House publicist realised.

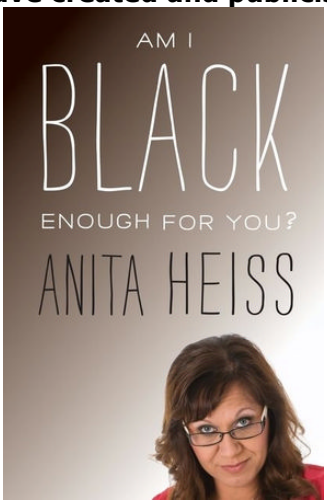
Heiss approvingly quotes David Marr on the Bolt Trial:

> *Freedom of speech is not at stake here. Judge Mordecai Bromberg is not telling the media what we can say or where we can poke our noses. He's attacking lousy journalism. He's saying that if Andrew Bolt of the Herald Sun wants to accuse people of appalling motives, he should start by getting his facts right.*

In the chapter "Where I began..." Heiss writes about her Aboriginal family tree. Many of the facts are wrong for she does not seem to have carried out even the most basic genealogical research.

Then, the key discussion of her mother's family as victims of the "stolen generations" is confused, often inaccurate and challenges the central thesis of that proposition, namely that Aboriginal families were decisively and permanently separated.

The story of Anita Heiss's family contradicts the "stolen generations" theory which activist historians have created and publicised.



The confusions in her account start early.

Heiss makes two references to her maternal grandmother's death in 1976. They are incorrect. Her grandmother, Amy Josephine Williams, died on 2 September, 1977.

Heiss writes that when her own mother, Elsie, was born on 11 November 1937 Amy was 32. That's incorrect. Amy was born on 26 October 1903 and would have been 34 in 1937.

Heiss claims that her grandmother Amy and younger sister Florence were taken into care in 1910. She says Florence was 4 years old. That's incorrect. Florence was born on 14 August 1907 and would have only been 2 or 3 years old – if that event took place as she asserts.

BIRTH CERTIFICATES: Heiss's grandmother, Amy Josephine, was born Emily Elizabeth Tallance on 26 October 1903 at Canbelego in New South Wales (between Cobar and Nyngan). Her mother was a 16 year old unmarried aboriginal girl called Minnie Tallance who had been born in nearby Warren. Possibly Amy's unnamed father was white. Though Heiss refers to them in *Am I Black Enough For You?*, the book contains no family photographs. The evidence that the birth certificate, in the name of Emily Elizabeth Tallance, belongs to the girl who became known as Amy Josephine Tallance is that when Amy married at Brungle Aboriginal Station (near Tumut) in November 1927 she gave her age as 24, recorded that her father was unknown and that her mother's name was Minnie Tallance, and gave Canbelego as her birthplace.

On 3 December 1927, Florence Tallance was also married at Brungle. She gave her mother's name as Minnie Tallance, father unknown, and said that she was 20 and had been born at Brungle. There is no corresponding birth certificate in the name of Tallance, but there is a 1907 birth certificate for a child named Florence born in Brungle on 14 August to a mother named Minnie *Tarrant*. There is a strong case for accepting that this is the birth certificate for Florence Tallance and that an error has been made in the surname. Minnie "*Tarrant*" and Minnie Tallance share some similarities apart from the shared first name. Both were illiterate, so a mistake in writing the family name could have been made and not corrected. Both shared the same age and both had been born in Warren. On the Aborigines Protection Board file Florence's age is not given but her birthday is shown as 14 August. In 1907 the only record for the birth of a child in Brungle named Florence to a mother named Minnie is the one for Florence "*Tarrant*".

Because Heiss failed to consult these certificates the ages she gave to her grandmother and Florence throughout her book are incorrect.

The "stolen generation" claims: On page 13 Heiss sets out a major part of her family story. To make it easier to follow I have put text by Heiss into italics, and then added my commentary.

> **HEISS:** *... none of the kids in my class had the same harsh and diverse family history as I did. You see, documents held by the New South Wales Department of Aboriginal Affairs show that in 1910 my grandmother, then known as Amy Josephine Talence, was removed by the Aborigines Protection Board from her family in Nyngan, along with her four year-old-sister, Florence*.

COMMENTARY: Is this accurate? Aborigines Protection Board files in the New South Wales State Archives tell a different story to the one Heiss tells. The files on Amy and Florence Tallance were compiled in 1922. They contain details of the Board's previous involvement in the girls' lives, and of subsequent events. The first notation for Amy was in 1915. She had been admitted to the Cootamundra Girls' Home at an unrecorded date and sent out to employment to a Miss Gibson of Vaucluse in Sydney (aged 12) in December 1915. Most probably she had been admitted earlier in 1915 and spent several months being trained for domestic service. At the time, this was the normal period of training and residence at the Girls' Home. Florence, for example, went to Cootamundra on 3 December 1921 when she was 14, and was sent on to employment in Mudgee on 30 August 1922 when she was 15. Before going to Cootamundra, both Amy's and Florence's files record they were living with their mother at Brungle.

Where is the document, which Heiss used, which says the children were taken into care from Nyngan in 1910? Does it explain how they came to be again in the care of their mother in Brungle before going to Cootamundra in 1915 and 1921?

Official documents spell the family name as Tallance, not *Talence* as Heiss suggests, and that spelling is consistently used in the family's birth, marriage and death certificates.

In her account, Heiss does not tell us the reason the Board "assumed control" of the children. The reason given on Amy's file was "To improve her conditions of living." And Florence, "To give her a chance of becoming useful & taking her from surroundings detrimental to her future welfare." From Minnie's death certificate it appears that she had another child in 1921 and perhaps family life at Brungle was complicated when Florence was taken into care that year.

> **HEISS:** *After spending time in Cootamundra Domestic Training Home for Aboriginal Girls, she [Amy] was moved to a Catholic institution for girls: the Home of the Good Shepherd in Ashfield, Sydney*.

COMMENTARY: None of this appears on either Amy or Florence Tallance's files. The Home of the Good Shepherd in Ashfield did exist at the time and did take child welfare cases. It seems odd that Heiss does not provide more information which should have been in the records she consulted. However, Heiss introduces a further claim which makes all this look very doubtful – unless she has the evidence to back it up. On page 36 she writes, "At the age of eleven she [Amy] had already been institutionalised in Coota[mundra] for six years ..." If you simply add those six years on to 1910, when Heiss says Amy was sent to Cootamundra, you arrive at 1916. From December 1915 until February 1917 Amy Tallance was working for Miss Gibson in Vaucluse – not institutionalised in Cootamundra. So, when did she go to the Home of the Good Shepherd, Ashfield? Actually, there is a connection with Ashfield. Her file records Amy was employed by Mrs J. Taylor in Bland Street, Ashfield, from 1917 to 1922.

While Heiss postulates that her grandmother spent long years institutionalised this is not supported by the official records. The APB forms ask a standard question: "Further particulars (where living during childhood, and in whose care)". On Amy's file the response reads, "In care of mother at Brungle." And Florence, "In Brungle Abo. Station in care of mother."

The whole thesis of the "stolen generations" is that Aboriginal families were deliberately and permanently broken apart, but clearly this did not happen in this case. If Heiss is accurate and the children were removed from Nyngan in 1910, then they were back with their mother in Brungle when they were again (?) removed in 1915 and 1921 to prepare them for work. This discrepancy means that until Heiss produces the evidence for the claims she is making her account should be treated with caution.

> **HEISS:** *From the ages of sixteen to eighteen, Amy was still under the control of welfare and went into service for a wealthy English lady my mum says lived at Parsley Bay in Sydney's east, although I have letters addressed to her via a woman in Kambala Road, Bellevue Hill*.

COMMENTARY: Why should there be any confusion and why should Heiss rely on her mother's memories of events that happened long before she was born when the files often (not always) give specific dates for the events they list? For example, if Heiss has consulted the records she would know that her grandmother worked for Mrs J. Hoets of Kambala Road, Bellevue Hill from August to November 1924, a job she had taken after another period of work back at Brungle.

> **HEISS:** *Amy also spent some time as a domestic servant at Meryula sheep station near Cobar from twenty to twenty-two years of age. She was finally released from her life of servitude around 1927, when she married my grandfather*.

COMMENTARY: By early 1927 Amy was once more back in Brungle doing daily work. Florence, who had come back to Brungle on holidays the previous December, went to work in Cobar in April 1927. The following month Amy came from Brungle to join her, working as a house maid for the same employer. She did not remain there very long and Heiss actually includes an extract from a letter James Williams wrote to her (though not realising its significance): "I'm ever so glad to hear that you will be coming home soon dear." In September both girls returned to Brungle. A notation on Amy's file reads: "Returned to Brungle without any explanation September 1927." On 5 November 1927 Amy married James Williams: on 6 November 1927 she gave birth to a son. The following month, December, Florence also got married in Brungle. The lively Tallance girls from Brungle seem very "unstolen" individuals.

> **HEISS:** *It is from this knowledge of the incredibly hard life my grandmother lived – and the one photo that always comes to mind – that I draw my strength, and from where stems my sense of commitment and obligation to do what I do in life*.

COMMENTARY: The family story Heiss tells is part of her claim that family members belonged to the "stolen generations". They have been used to give authority to her criticisms of Australia's racist past, and present. They also underpinned a children's book she wrote about the "stolen generations" called *Who Am I? The Diary of Mary Talence [sic], Sydney, 1937*. That book, which is much used in schools to teach about our racist history, also informs readers "that Captain Cook discovered Australia in 1788".

Other comments by Heiss deserve scrutiny. Although Amy, Florence and Minnie lived for many years in Brungle, Heiss writes – Page 14:

> *My maternal grandparents begin the love story of my family as I know it. When my grandmother was eighteen and still in service [working as a maid], she was walking through the Botanic Gardens in Sydney and met another Aboriginal lady, who turned out to be my grandfather's sister. Her name was Tilly Williams and she was also living under the Protection Act. She asked my grandmother, 'Are you Aboriginal?' and that's how they became friends. My great-aunt Tilly later took my grandmother back to Brungle in 1923, where Amy met the love of her life.*

Brungle was her home and James Williams was born there in 1900. How could she not already know both him and his sister?

Anita Heiss states that she owns the letters written by her courting grandparents from 1923 to 1927. Writing of them Heiss even tells her reader that they mention the presence of Amy's mother Minnie in Brungle: "My grandfather's letters to his 'ever loving Amy' provide news to my grandmother of what is happening [in Brungle] with her own family especially her mother, and how they are doing." Didn't Heiss find this odd? Wasn't the supposed "stolen generations" policy meant to permanently destroy links between Aboriginal family members? Why didn't Heiss point out that Amy's supposedly lost forever mother (Heiss's great-grandmother) was also living in Brungle?

Without knowing what else was happening in the lives of the two people who would become her grandparents, Heiss's accounts are misleading: "My grandparents maintained a long distance relationship, from Brungle to Bellevue Hill from about 1923 to 1927, surviving on letters and gifts sent by post." This is not correct. Amy worked at other places than Bellevue Hill in this period and also, at times, returned to Brungle. The actual story is more complicated, and personal.

Heiss does not reveal that her grandparents saw far more of each other before their marriage and that they were not simply "cheeky kids": "Sometimes they read [the letters exchanged between her grandparents] like cheeky kids in a world of their own, but clearly even trivia is a tool that was essential to them remaining connected to each other when 'real' life kept them so far apart for so long." Heiss would know the naivety of all these comments if she had consulted the records she refers to: "After a long courtship my grandparents finally married in 1927."

Heiss's maternal grandfather, James Andrew Williams, was born in 1900 at the Aboriginal Station Brungle. In an interview in 2006 his daughter Elsie Heiss said, "My mother was brought up in a Catholic home and my father was from an Irish Catholic background." What she meant by that comment about her father is unclear. Though it obviously seems to suggest his racially mixed parentage this may not be the case at all, or be what she intended to mean. When his parents were married in 1899 the Catholic ceremony was performed in the Brungle Aboriginal Camp by Father Patrick Hanrahan.

In 1927 the marriages of Amy and Florence were not the only ones in the Tallance family. Minnie herself was married in Brungle on 12 April. Having had at least four children by then (and she would have two more), she described herself as a spinster without issue. All three women were married in the manager's office in Brungle, in the rites of the Presbyterian Church.

Conclusion. Obviously, the facts as presented here are completely different from those given in Anita Heiss's *Am I Black Enough For You?* At the Bolt Trial she presented a witness statement that claimed her grandmother and sister were part of the "stolen generations". If there really is, as Heiss says, an Aborigines Protection Board file which says that 5 year old Amy, "along with her four year-old-sister, Florence", were removed from Nyngan in 1910 she needs to bring it forward to clarify how they were taken away, for what would have been the second

time, in 1915 and 1921, from the care of their mother in Brungle.
Anita, please explain.

http://www.quadrant.org.au/blogs/connor/2012/04/anita-heiss-where-i-began
http://www.quadrant.org.au/magazine/issue/2012/6/passion-and-illusions-anita-heiss-s-stories

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Am I Silent Enough for You?

Andrew Bolt, Tuesday, June, 26, 2012, (7:14am)

Michael Connor dares to review *Am I Black Enough For You?* - a taxpayer-funded book that asks a question which the author has helped to make too dangerous for me to answer. Indeed, it is too legally dangerous for me to allow you to debate it on this blog.

There are some observations in the book which my lawyers would not like me to repeat. But surely I am still able in this country to quote this:

Offering a quote from her barrister Aron Merkel, she says his words gave her goosebumps. They include one of the Nazi comments he directed towards Bolt. Heiss says, "I knew at that moment that we would win." Summing up her one day in court she correctly noted, "Aron had set the tone for the trial." Reflecting on those headline-making slurs that appeared in the next day's newspapers, has she never wondered if a Heiss and a Merkel ever confronted each other somewhere in Holocaust Europe?

I will add just this: Merkel has never apologised for that foul, foul slur, although senior members of the Jewish community have rung me to express their utter disgust. Until that apology is offered, my judgement of Merkel will not change - even if that judgement, too, I must keep to myself for safety's sake.

http://blogs.news.com.au/heraldsun/andrewbolt/index.php/heraldsun/comments/am_i_silent_enough_for_you/

Freedom of Speech

The White Aborigines Trial

Michael Connor, Quadrant, Volume LV Number 11

Photo: White Aborigine Graham Atkinson gives black power salute outside the Federal Court

For a decision in the Bolt trial we waited from autumn into spring. On September 28, Justice Bromberg took about twenty minutes to read the summary of his decision to a packed courtroom. Twelve paragraphs into the thirty-paragraph document he said, "Mr Bolt and the Herald & Weekly Times relied upon the heading of Part IIA [of the Racial Discrimination Act] to contend that the operation of Part IIA is restricted to racist behaviour based upon racial hatred. I disagree." It was clearly all over. How bad it will be for free speech is still not clear. Bromberg's tone (a very important word in his decision) gave those last two words dramatic importance. The first culture wars trial finished with a clear victory for the Left, and a damaging result for free speech in Australia. The bad "Lavarch Law" brought a bad result.

In the street behind the Melbourne Federal Court is the Koori Heritage Trust Cultural Centre. Bolt prosecutor Ron Merkel, QC, was one of its founders and has been a generous source of funds. On Bolt decision day I went there. The street window of the ground floor shop has a white lettered sign saying "Celebration Sale"; it was surely no more than an unhappy coincidence.

The shop sells jewellery, cards, posters, DVDs, heavily messaged T-shirts—during the trial I had seen some of them worn in the courtroom. "Sorry" T-shirts are on sale less 50 per cent. There are Aboriginal flags on sticks and I had just seen some of these in the forecourt of the Court. They were being waved in the pleasure of victory for the television cameras, and in anger towards Andrew Bolt. The black, China-made, cotton T-shirts, with messages of land rights spelt out in yellow and red, are not ordinary clothes. The Cultural Centre shop is selling the "skin" of the white

Aborigines. These clothes are racial identifiers. In a country where it is now unacceptable to associate black skin and Aboriginality, white people dress in these clothes to signal and assert their own Aboriginality. If that seems fanciful it is exactly what Pat Eatock claimed in her written trial submission:

As my health has deteriorated, I have become more accustomed to wearing clothes that clearly announce my involvement with Aboriginal issues, usually black trousers with T-shirts and with Aboriginal flag and appropriate slogans. I have been known to draw attention to these shirts as "my skin". They certain [sic] allow my Aboriginality to be very visible to all.

When Ron Merkel read this out nobody wept at its sadness, or its emptiness. Andrew Bolt referred to the diaries of Victor Klemperer, a German Jew of the Nazi period, and he was treated with disdain by Herman Borenstein, SC, for doing so. Klemperer wrote of the everyday, mundane details of racial persecution. He wrote of being forced to wear the yellow star. On the day its wearing became compulsory for Jews he wrote: "Yesterday, as Eva [his Aryan wife] was sewing on the Jew's star, I had a raving fit of despair." It took him some days before he dared to walk outside. When he did so he wrote, "Every step, the thought of every step is desperation." On one hand Pat Eatock's longing to be publicly recognised as Aborigine in a free state, and on the other Klemperer's horror of being forcibly branded a pariah in a racist state.

Bromberg paraphrased Eatock's testimony in a way that trivialises the real experience of "racism":

she has experienced racism but said that because she was not perceived to be Aboriginal she used to experience a different type of racism. Often people would make racist remarks about Aboriginal people in her presence. Ms Eatock found experiences of that kind stressful. Her way of dealing with it was to pre-empt it by telling people at the outset that she was Aboriginal or wearing clothes that announced her involvement with Aboriginal issues.

Pat Eatock's clothes were chosen not just to show her "involvement with Aboriginal issues" but to mark her, in her own eyes, as an Aboriginal person. In this strange new Australia race is not a matter of skin colour but of clothing. Is Prada a race?

I am writing this just days after the trial result. So soon after Justice Mordecai Bromberg gave his decision it is being pored over and analysed. There seems great uncertainty about what its implications will be for exercising free speech in Australia.

Photo: Costume as race. Racial clothing outside the Court

I was there at the beginning, and I was there at the end. I was in the courtroom when wit and humour became a race crime. I saw the torture they inflicted on Andrew Bolt for his wrong ideas and the pleasure they got from hurting him. I heard meanness and I saw hatred on people's faces—but they weren't the ones on trial. During the lunch break on the first day a woman said loudly, "I'm interested in anything against Bolt. This time he has bitten off more than he can chew." Back in the courtroom Eatock's solicitor, Joel Zyngier, greeted her with a kiss.

Broadsheet newspaper readers saw the courtroom through the eyes of Karl Quinn in the *Age* and Michael Bodey in the *Australian*. Quinn, the *Age* entertainment editor, sometimes got a bit overexcited. At one point during Bolt's cross-examination he threw himself forward in his seat, extended an arm and, making a pump action with his open hand, grunted aloud as he urged Bolt to respond to a question fired against him by Borenstein. Ironically, the next morning's headline of the heavy-breathing journalist's account read, "Deep sighs aside, Bolt keeps his cool in denying his columns were racist". At the end of that day, as the courtroom cleared, the *Age* turned to the *Australian* and said, "Crikey!"

The following morning in the *Australian* Michael Bodey's account of the cross-examination appeared on the same page as a story about abused journalistic practices at *Crikey*. As the trial lawyers discussed journalistic standards at the Herald and Weekly Times the internet journal had to remove material from its site after publishing reader comments abusing James Packer and slurring his wife. One comment, which involved their children, was so defamatory, said the *Australian*, that "it cannot be republished". The day before, *Crikey* had piously reported on how offensive comments were removed from the Bolt blog.

Photo: Andrew Crook, at top, with prosecution lawyers and litigant Graham Atkinson on the day of the verdict

Crikey "senior journalist" Andrew Crook covered the trial in a string of gloating, self-righteous reports. After my first account of the trial was published in the May edition of *Quadrant* Crook wrote that I was part of a conservative plot "to go to war against Bromberg" if Bolt lost his case. Mixing his metaphors, he said that I was "opening the floodgates" (Crook writes like that) on Justice Bromberg: "Michael Connor noted the [failed ALP] Bromberg preselection bid, but added that because the case was still before the court he couldn't draw any obvious conclusions." He took a fact from my introduction of the judge and lawyers at the beginning

of my article: "Judge Bromberg had been a St Kilda football player and had previously stood, unsuccessfully, for pre-selection as an ALP candidate." He then jumped 4610 words to combine it with the very last line of my text. This final sentence was meant to remind readers that the case was *sub judice*: "Until the matter is decided, discussion of this case is necessarily constrained." Clearly he distorted what I wrote. Yet Crook was in the courtroom as Bolt was severely criticised for minor and honest errors in his writing. It was as if—and this was spread widely across the Left's commentary—what was happening to Bolt was only applicable to their conservative enemies. In general (there were some exceptions) they encouraged the assault on freedom of speech that the case represented. Fairfax journalist David Marr wrote of the outcome: "Freedom of speech is not at stake here. Judge Mordecai Bromberg is not telling the media what we can say or where we can poke our noses. He's attacking lousy journalism." The Lavarch Law, the Racial Discrimination Act, was not written to attack bad journalism. If it was, then journalists like Andrew Crook should be on trial.

In court the defence was constrained by political correctness and the straitjacket on free speech which already exists and which prevents the honest examination of Aboriginality—except if you are Aboriginal. The defence did not question the claimed Aboriginality of the litigants even though this was what the prosecution said the case was about. Let me rewrite that sentence and change one word: The defence could not question the claimed Aboriginality of the litigants even though this was what the prosecution said the case was about.

Photo: Media Conclave. The Australian, the Age and Crikey on the day of the verdict

In the background to this case is the involvement of people who were not in court. Amongst them was Michael Lavarch, the partner of litigant Larissa Behrendt and the former Labor politician responsible for writing the Act which was used to attack Bolt. Choosing this law and Aboriginality successfully wedged the defence. It would have been impossible for them to question the self-proclaimed Aboriginality of the nine who had chosen to confront Bolt. If they had challenged this, the court would still be in daily session in Melbourne and the resources needed would have been beyond belief.

They were also constrained by another prosecuting strategy. Australia is a modern liberal democracy. The state and its people actively oppose any classification of its population in terms of race. This democratic impulse is now under stress because we have citizens who oppose this. Some want to be dealt with in terms of their religion and others in terms of their race, or the race they claim to be. Our normal modes of speaking and discussing matters of public interest are also constrained by political correctness which has not gone away but has become entrenched by our schools, universities and state-owned media. The language permissible for discussing Aboriginality in the courts, as in the media and even in private life, is a bogus construction which entrenches prejudice and intolerance and shelters deceit from criticism. Bolt was found guilty of breaking speech rules which were intended to constrain people like him. He has bad ideas, which he formulates with humour and clarity to a widespread audience, and he was prosecuted for this. He was found guilty of speaking freely.

Photo. Victory: Wayne Atkinson and Geoff Clark talk to the media.

The defence argued that the case was about free speech. The prosecution mocked them, declaring it was about Aboriginality and knowing this would not and could not be contested. On Day 1, in his opening submission, Merkel said, "Now, Your Honour, what is unusual and extraordinary about the present case is, Mr Bolt, in his articles, has taken us back to that eugenic approach to Aboriginality." On Day 7, Merkel said, "This is about race, it is about colour, it is about ethnic origin." It was impossible for the defence to talk freely about race, colour and ethnic origin.

On the opening day, the number of litigants to be cross-examined by the defence was reduced from four to only three. The six who were not called provided written testimony and the judge refers to their documents in his decision. He talks of each individual and finishes each account with the same paragraph which begins, "The evidence given by [name] was not contested and I have no reason to not accept it as truthful." The evidence which was thus conceded by the defence included the litigants' claims to be Aboriginal. The judge's paragraph ends, "I accept that [she/he] feels offended, humiliated and insulted by the articles or parts thereof in the manner outlined by his evidence."

Pat Eatock, Bindi Cole and Larissa Behrendt were cross-examined. Pat Eatock's evidence, said the judge, was "largely uncontested"; Bindi Cole's was "not contested"; and Larissa Behrendt's was "not contested or takes account of what she said in cross-examination". In each case the judge accepted the evidence as "truthful". When a person stated that they were Aboriginal because a family forebear was Aboriginal what did that actually mean? There was no investigation by the defence to work that out. Bindi Cole, for instance, said of her grandmother, "She knew she was Aboriginal because her mother told her she was Aboriginal I guess because she was black." After the hearing and before the decision was handed down a video about Cole was placed on the Museum Victoria website. It included a photo of her father and his mother. The caption below the image of a light-skinned lady read "my Aboriginal grandmother". There was no effort to establish factual documented genealogies.

Merkel invoked Nazi anti-Semitism, extermination and the Nuremberg Laws. Bindi Cole had a Jewish mother. As the judge, lawyers and some members of the audience well knew, in another time and place that would have made her Jewish by birth, and she would have been a victim of Hitler's butchers. She represented her race as a personal decision. It was not far from Bolt's own arguments that these individuals had made a decision from multiple choices available to them. Asked if she could "identify more closely with her Jewish heritage" she replied, "Yes, if I wanted to, I could."

The defence could not safely question the litigants' Aboriginality, but there was nothing in the Bolt articles which did so anyway. Yet, in his decision the judge says that this is permissible—provided he approves of the manner in which it is done:

It is important that nothing in the orders I make should suggest that it is unlawful for a publication to deal with racial identification including challenging the genuineness of the identification of a group of people. I have not found Mr Bolt and the HWT to have contravened s 18C simply because the newspaper articles dealt with subject matter of that kind. I have found a contravention because of the manner in which that subject matter was dealt with.

This is not what he said in court. On the morning of Day 5, Bromberg said to Bolt's counsel, Neil Young QC: "Well, I don't think you will have a lot of trouble persuading me that any entrée into the debate as to who should be regarded as an Aboriginal would offend the Act."

Five and a half pages of the Bromberg judgment are spent discussing "The Conventional Meaning of 'Australian Aboriginal'". One of the legal precedents he cites is a judgment made by Ron Merkel. Nowhere in this section does the word "black" appear. "Dark" gets a single usage in a section on Australians and the "stereo-typical images" of Aborigines we hold. To illustrate his own assertion "that from time to time prominent people, amongst others, have raised concerns that identification by others as Aboriginal people involves opportunism", he uses a 1988 quote from Bruce Ruxton. The assembled legal authorities here, the complexity and the confusion should suggest this is not a matter for the courts but for the parliament.

Prosecuting lawyer Borenstein asked Andrew Bolt about the "vibes" in his articles. Young objected. Ten times in his decision Bromberg referred to the "tone" of Bolt's articles and he chose debatable terms to describe it. The tone at different times was said to be "stinging", "cynical", "mockery", "derisive". That is one point of view. Another critic of Bolt's writing, a *Quadrant* reader for instance, might see them quite differently. During the trial Bolt was criticised by the prosecution for his legitimate use of inverted commas. Bromberg's reliance on his perceptions of the "tone" of Bolt's writing may be something that an appeal court will have to deal with. From Australia's writing establishment there has, so far, been not a murmur of protest. But what of the judge himself? Was he, perhaps, guilty of questionable "tone" in his humour? Is one person's smile another's smirk?

On the morning of April Fool's Day, Young referred to *Hagan v The Trustees of Toowoomba Sports Ground*, and the following dialogue occurred:

Bromberg: *This is the cartoon case, is it?*
Young: *No. This is the case about the grandstand at a rugby league ground in Toowoomba.*
Bromberg: *The grandstand with—*
Young: *That the local council named the—*
Bromberg: *Yes.*
Young: *—I'm trying to think of the man's surname—the E.S. "Nigger" Brown Stand.*
Bromberg: *The "Nigger" Brown Stand. That's right.*

The discussion continued as the lawyer made some point of law. What you can't see in the official transcript is the smile on the judge's face at the use of this naughty word, *Nigger*. I thought it was a smirk; I also thought, especially on a judge, that it was cynical and mocking.

During the trial the prosecution had great difficulty in pointing to the actual words that offended the Lavarch Act. The judge had a similar problem and resorted to these questionable interpretations of "tone". They missed the point. The offence they should have been exploring wasn't in the text, it was in the photographs. Eatock's lawyers drew on an Australian Press Council "Statement of Principles" and some of this found its way into the judgment:

Publications have a wide discretion in publishing material, but they should balance the public interest with the sensibilities of their readers, particularly when the material, such as photographs, could reasonably be expected to cause offence.

It was the photos, not the words, which caused the offence. The Bolt articles were accompanied by photos which showed happy, successful white-skinned people. They took offence from the juxtaposition of the word *Aborigines* and their own photographs, with those white faces, for they believed that this would provoke mockery from Bolt's readers. Exposing their Aboriginal whiteness in public caused them unease. As the judge noted when citing Bindi Cole's evidence: "She found his use of the phrase 'distressingly white face' insulting, humiliating and offensive." The photos are preserved for posterity in the articles at the end of the judge's decision. The white Aborigines were also judging themselves.

On Day 4 there was a moment that seemed the intervention of a novelist overdoing his coincidences. Young and Bromberg were wandering about in a rambling discussion which touched on white Aborigines and skin colour. Everyone in court was focused on what was happening at the front of the room when the door at the back opened and a black man and a white woman came into the courtroom. This gentleman was not dark-skinned, he was truly black. He could have been anyone, from anywhere. He could have been a judge, a lawyer, a litigant, an academic, anything. His companion had long blond hair. They sat at the back of the court. None of the white Aborigines, none of the lawyers, not even the judge paid them any attention. His mere presence in this white room was a dramatic moment which made everything happening seem even more bizarre. As he watched, Young was talking about multiculturalism:

there is a debate, for instance, in Germany and in France, where Angela Merkel [and] Nicolas Sarkozy have said that multiculturalist policies have not worked well in those societies. So there is a genuine debate about the matter. Mr Bolt is articulating an opinion in the context of a similar debate in Australia.

In the Left-dominated Federal Court of Australia it did not seem very smart to remind the judge, prosecuting lawyers and angry audience of yet another Bolt thought-crime. The discussion moved on to skin colour. Bromberg referred to a "skin test" and Young pointed out "that skin is not what he is concerned about. He said that time and time again." His Honour replied, "Yes", and just about here the black man left the court. If your eyes had wandered, as mine did, from the silent visitor to the rows of white Aborigines, and to the judge and lawyers, and to the media, the strangeness of what was taking place seemed obvious. But no one noticed, and besides they would not have cared.

The hearing ran across two weeks. One side was passionate about what they were doing. On the Monday of the second week the opposing lawyers were early in the courtroom and were chatting together. Merkel and his team had spent the weekend working on the case. Young told them he had spent the day before playing golf.

Bolt is not the only guilty party in Bromberg's decision. We are, too. Young made an accurate summary of the prosecution's aim:

As we understand their submission, it is to the effect that the standard of reasonableness is not a community standard, it's the perspective of the Aboriginals who regard themselves as referred to either directly or indirectly by the article. In our submission, that's simply wrong.

Bromberg decided that it was Young who was wrong: "to import general community standards into the test of the reasonable likelihood of offence runs a risk of reinforcing the prevailing level of prejudice". While this may be read as the leftist elitism we are daily confronted with, it may also reflect the Jewish experience which has marked the families of the judge and the prosecution lawyers. In Nazi-dominated Europe their families were torn apart by "the prevailing level of prejudice"; but to read tolerant Australia in this light is utterly intolerant and abhorrent. To consider that lawyers and a judge with postwar immigrant backgrounds think so little of this country that they believe minorities have to be protected from the majority represents the real failure of multiculturalism.

Photo: Victory. Scene outside Court.

The decision was given a few days after Andrew Bolt's fifty-second birthday. The judge gave his summary and we all stood as he left the courtroom. Geoff Clark stepped into the centre aisle and began clapping. This was taken up by his supporters and there was some cheering. People then moved down to the forecourt where the media was spread out as a barrier facing the main doors. The wind was gusting as we waited. Some of the nine who had come to the final day talked to the media and their supporters. "That was bloody great. What a great day," said a woman. "What can you say," said one. "We won," replied her companion.

Photo: Victory. Pat Eatock outside the Court.

Pat Eatock in her wheelchair came out with Geoff Clark and their legal team. Clark had put on his skin cloak. She had on a man's black hat. Both had yellow makeup smeared across their faces. "The sword of justice has struck and cut off the head of the serpent," said Clark. "Let's hope it doesn't grow two heads." Eatock said it was the happiest day of her life. I believe this.

She is a very political woman and understood the issues which were involved in this case. Amongst the insults I heard spewed on Bolt that day someone called out, when he spoke up for free speech, "He doesn't get it." They were quite wrong. Andrew Bolt does get it, though I'm not sure Geoff Clark does. And if Clark doesn't get it, what really was going on during that trial?

Photo: Victory. Geoff Clark in face makeup and cloak outside the Court.

Clark, interviewed on 3AW by Neil Mitchell, said that he wanted Bolt to be "fair and balanced" in his future writings. Mitchell said, "On whose judgment?" Clark replied, "Well, on society's judgment." The case had been decided the day before from the point of view of those offended. He also said, and his words unfortunately mirrored the Federal Court decision, "Racism is entrenched in this society." And he made a confession, "I'm probably racist meself [*sic*] in some regards." Chillingly, he interpreted the outcome as a warning to other free thinkers, and there is no reason not to think that this is the view of those who brought this case into the Federal Court: "there has to be an example made".

The flags from the shop around the corner were there on that windy day in Melbourne. We waited for Andrew Bolt. "Do you reckon he will go out the back door?" asked one of the nine. As we watched the doors an elderly lady came out, tripped, fell sideways and ended in agony on the ground. People gathered around her. An ambulance was called. She was still lying there when Bolt came out. It was a fitting if cruel symbol of Australian freedom. The media hemmed him in and he made a statement. He said it was a "terrible day for free speech". He was loudly jeered. He turned to his

persecutors and said quietly, "Can I at least have my free speech now?" He continued his statement:
It is particularly a restriction on the freedom of all Australians to discuss multiculturalism and how people identify themselves. I argued then and I argue now that we should not insist on the differences between us but focus instead on what unites us as human beings. Thank you.

Photo: Defeat. Andrew Bolt outside the Court.

He did not answer questions. As he moved away he was again jeered and insulted. The people who did this had been in the courtroom. They were dressed in clothes marked by Aboriginal colours, symbols and slogans. They were waving Aboriginal flags, and their skin was lighter rather than darker. Their behaviour was offensive, insulting, humiliating and intimidating. I was there. I was standing in front of a woman who called out, "That's why you're scum Bolt." Another said, "What an evil person." They were smiling, they were delighted with what they were doing. Later that afternoon an enormous thunderstorm hit Melbourne. The airport was twice closed, there was chaos and cancelled flights. The rain inundated the city. This was Melbourne, on the day Justice Bromberg gave his decision in September 2011.
Michael Connor's previous report on the Andrew Bolt trial appeared in the **May issue**.
http://www.quadrant.org.au/magazine/issue/2011/11/the-white-aborigines-trial

It's on again: GERMANICS vs JUDAICS...

Simon Wiesenthal Center to Germany: restore circumcision

The Wiesenthal Center on Thursday urged authorities in Berlin to overturn a court ruling banning circumcision, saying it would be "a stain on today's Germany" to let it stand. 06 July 2012 - Last updated 09:42AM

Photo: Simon Wiesenthal Center to Germany: restore circumcision

The Los Angeles-based Jewish group said Chancellor Angela Merkel and German lawmakers should act immediately to reverse the June 26 ruling by a regional court in Cologne.
The German court ruling "is an attack on one of the fundamental principles of Judaism," wrote Rabbis Marvin Hier and Abraham Cooper, founder and dean and associate dean of the Center in a letter to Merkel.
"For 3,500 years, every male child has entered the Jewish people through the rite of circumcision. We are not talking about a mere custom, but a biblical principle that has defined the Jewish people from time immemorial," they said.
They noted that Nazi dictator Adolf Hitler said "in one of his infamous anti-Semitic rants" that "conscience is a Jewish invention, it is a blemish like circumcision." [Reference please. -ed]
"Since the defeat of Nazism, Germany has come a long way, and worked very hard to successfully chart a new course after the horrific legacy of the Holocaust (sic) by guaranteeing religious freedom and democracy.
"It would be a stain on today's Germany to have this ruling stand," the rabbis added.
In a decision that sparked outrage from German Jewish and Muslim groups, the German court ruled against a doctor in Cologne who had circumcised a four-year-old Muslim boy on his parents' wishes.
The judges ruled -- in what could set a legal precedent -- that the "fundamental right of the child to bodily integrity outweighed the fundamental rights of the parents."
The ruling marked a "big blow against integration," a spokesman for the Coordinating Council of Muslims in Germany, one of some 20 groups representing most of Germany's around four million Muslims, said on Wednesday. http://ejpress.org/article/59954

... and others: http://zpravy.idnes.cz/video-telum-na-ulici-prejizdeli-hlavy-ukryvany-film-zachytil-lync-nemcu-1o7-/domaci.aspx?c=A100504_210833_domaci_vel